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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,717	11/06/2000	Robert J Briscoe	36-1382	3564

23117 7590 12/20/2004

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EXAMINER

JONES, PRENELL P

ART UNIT PAPER NUMBER

2667

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/674,717

Applicant(s)

BRISCOE ET AL.

Examiner

Prenell P Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15, 16, 18-26, 29-36, 37 is/are pending in the application.
- 4a) Of the above claim(s) 37 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-22, 29, 34 and 35 is/are allowed.
- 6) ☒ Claim(s) 1-13, 15, 16, 23-26 and 30-33, 36 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Arguments

1. Applicant's arguments with respect to claims 1-13, 15, 16, 18-26, 29-36 and 37 have been considered but are moot in view of the new ground(s) of rejection.

Election

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, 15, 16, 18-26 and 29-36, drawn to distributing a tariff, classified in class 370, subclass 252, 235-237, 338.
- II. Claim 37, drawn to testing traffic in a packet-based network, classified in class 370, subclass 230, 400.

2. The inventions are distinct, each from the other because of the following reasons:

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Mr. Raymond Mah on December 8, 2004, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-36. Affirmation of this election must be made by Applicant in replying to this Office action. Claim 37 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Claim 37 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper dated 12/8/2004.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1, 3 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulkan et al in view of Honig et al and Easki et al.

Regarding claims 1, 3 and 36, Wulkan discloses (Abstract, Figs. 3, 5-11) a telecommunication call management system wherein the architecture includes (pg. 5, line 15-30) carrier selection database, meter for measuring usage charges, utilizes Internet, (pg. 7, line 18-30, pg. 11, line 13-28, pg. 22, line 12 thru pg. 23, line 30, pg. 25, line 26 thru pg. 29, line 32) includes an updating mechanism, updating tariff information/databases (revising tariff), a plurality of subscribers (terminals), (pg. 7, line 12 thru pg. 8, line 21) updating a plurality of data servers which holds a geographically based tariff data of service providers, tariff server includes performance data, billing parameters, cost router, calculate cost (tariff), and the data server distributes tariff data computers, tariff data server provided for monitoring/updating changes in telephone service provider tariffs and downloading a database of tariff data to computers. Wulkan is silent on tariff associated with a formula for calculating a charge as a function of loading of a network, and internetworking protocol. In analogous art, Honig (Abstract, page 867, right column, page 870, left column thru page 873, right column) a communication system that utilizes usage-based pricing of packet data as associated with user population (loading), formulas calculating tariff/cost with respect to user

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population (system load), and Easki discloses (Abstract, Figs. 5, 7, 13, col. 5, line 61 thru col. 9, line 29, col. 33 thru 38) data transfer routing and management for a packet communication system that includes ATM networks wherein there exist multiple internetworking units (IWU), packets include IP addresses, statistical information is used to charge fees (tariffs) to each cell/subscriber (multiple customer terminals), usage charge of subscriber is recorded and multicasting data. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to be motivated to implement calculating tariff/cost with respect to system loading and packet-based internetworking protocol associated with a plurality of nodes as taught by the combined teachings of Honig and Wulkan with that, which is taught by Easki's multi-user packet data transfer routing management system for the purpose of further managing system use and data flow such as decreasing delay as associated with communication between source and destination terminals.

Regarding claims 4 and 5, as indicated above, Wulkan discloses (Abstract, Figs. 3, 5-11) a telecommunication call management system wherein the architecture includes (pg. 5, line 15-30) carrier selection database, utilizes Internet, (pg. 7, line 18-30, pg. 11, line 13-28, pg. 22, line 12 thru pg. 23, line 30, pg. 25, line 26 thru pg. 29, line 32) includes an updating mechanism, updating tariff information/databases (revising tariff), a plurality of subscribers (terminals), (pg. 7, line 12 thru pg. 8, line 21) updating a plurality a data servers which holds a geographically based tariff data of service providers, tariff server includes performance data, billing parameters, cost router,

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calculate cost (tariff), and the data server distributes tariff data computers, tariff data server provided for monitoring/updating changes in telephone service provider tariffs and downloading a database of tariff data to computers.

Regarding claims 8 and 9, as indicated above, Easki discloses (Abstract, Figs. 5, 7, 13, col. 5, line 61 thru col. 9, line 29, col. 33 thru 38) data transfer routing and management for a packet communication system that includes ATM networks wherein there exist multiple internetworking units (IWU), packets include IP addresses, statistical information is used to charge fees (tariffs) to each cell/subscriber (multiple customer terminals), usage charge of subscriber is recorded, and multicasting data. Easki further discloses data travel via determined routes, which include selected links (predetermined channels) and tariff charge based on a variety traffic flow parameter such as bandwidth.

2. Claims 2, 6, 7, 10, 13-16, 23-26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulkan et al in view of Honig et al and Easki et al as applied to claims 1, 3-5, 8, 9 above, and further in view of Saari et al.

Regarding claims 2, 6, 7, 10, 13-16, 23-26 and 33, as indicated above, Wulkan discloses (Abstract, Figs. 3, 5-11) a telecommunication call management system wherein the architecture includes (pg. 5, line 15-30) carrier selection database, meter for measuring usage charges, utilizes Internet, (pg. 7, line 18-30, pg. 11, line 13-28, pg. 22, line 12 thru pg. 23, line 30, pg. 25, line 26 thru pg. 29, line 32) includes an updating

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mechanism, updating tariff databases (revising tariff), a plurality of subscribers (terminals), (pg. 7, line 12 thru pg. 8, line 21) updating a plurality of data servers which holds a geographically based tariff data of service providers, tariff server includes performance data, billing parameters, cost router, calculate cost (tariff), and the data server distributes tariff data computers, tariff data server provided for monitoring/updating changes in telephone service provider tariffs and downloading a database of tariff data to computers, Honig (Abstract, page 867, right column, page 870, left column thru page 873, right column) a communication system that utilizes usage-based pricing of packet data as associated with user population (loading), formulas calculating tariff/cost with respect to user population (system load), and Easki discloses (Abstract, Figs. 5, 7, 13, col. 5, line 61 thru col. 9, line 29, col. 33 thru 38) data transfer routing and management for a packet communication system that includes ATM networks wherein there exist multiple internetworking units (IWU), packets include IP addresses, statistical information is used to charge fees (tariffs) to each cell/subscriber (multiple customer terminals), usage charge of subscriber is recorded and multicasting data. However, Wulkan, Honig and Easki are silent in communicating a formula for calculating charge usage along with a separate formula for coefficients used calculating coefficients used in charge usage formula. In analogous art, Sarri discloses (Abstract, Figs. 1-3, 6-12, 14, col. 4, line 4 thru col. 8, line 28) determining charges for usage of a network connection whereby the architecture includes ATM network environment, fixed tariff/billing charge, communicating packet data, multiple nodes, billing unit used for computing connection usage charge, fixed rate/variable rate billing schemes, possible

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factors used as variables associated with usage charge formula include service type, QoS, ATM parameters, connection time, other traffic flow parameters, (col. 14, line 5 thru col. 26, line 21) usage charge formula consist of various coefficients and formulas for computing the various variables/coefficients, (fig. 6, col. 11, line 56 thru col. 12, line 7, col. 17, line 60 thru col. 18, line 51, col. 21, line 42 thru col. 24, line 67) detecting load levels/load status, furthermore Saari suggest that the Internet can also be implemented. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement separate/multiple formulae for calculating network service charges and its associated multiple variables/coefficients/factors as taught by Sarri with the combined teachings of Wulkan, Honig and Easki for the purpose of further managing network services along with analyzing network usage in a communication system.

3. Claims 11, 12, 30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wulkan et al in view of Honig et al and Easki et al as applied to claims 1, 3-5, 8, 9 above, and further in view of Okamoto.

Regarding claims 11, 12, 30 and 32, as indicated above, Wulkan discloses (Abstract, Figs. 3, 5-11) a telecommunication call management system wherein the architecture includes (pg. 5, line 15-30) carrier selection database, meter for measuring usage charges, utilizes Internet, (pg. 7, line 18-30, pg. 11, line 13-28, pg. 22, line 12 thru pg. 23, line 30, pg. 25, line 26 thru pg. 29, line 32) includes an updating mechanism,

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updating tariff databases (revising tariff), a plurality of subscribers (terminals), (pg. 7, line 12 thru pg. 8, line 21) updating a plurality of data servers which holds a geographically based tariff data of service providers, tariff server includes performance data, billing parameters, cost router, calculate cost (tariff), and the data server distributes tariff data computers, tariff data server provided for monitoring/updating changes in telephone service provider tariffs and downloading a database of tariff data to computers, Honig (Abstract, page 867, right column, page 870, left column thru page 873, right column) a communication system that utilizes usage-based pricing of packet data as associated with user population (loading), formulas calculating tariff/cost with respect to user population (system load), and Easki discloses (Abstract, Figs. 5, 7, 13, col. 5, line 61 thru col. 9, line 29, col. 33 thru 38) data transfer routing and management for a packet communication system that includes ATM networks wherein there exist multiple internetworking units (IWU), packets include IP addresses, statistical information is used to charge fees (tariffs) to each cell/subscriber (multiple customer terminals), usage charge of subscriber is recorded and multicasting data, However, Wulkan, Honig and Easki are silent on encrypting/decrypting usage charges. In analogous art, Okamoto discloses (Abstract, 1-16b, col. 7, line 3 thru col. 9, line 58, col. 11, line 12 thru col. 12, line 39) calculating billing charges associated with usage of network services, multiple subscribers, communicating packet data, encryption/decryption unit, encrypt charge into a check code. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to be motivated to implement billing charges as taught by Okamoto with the combined

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teachings of Wulkan, Honig and Easki for the purpose of maintaining some kind of security associated with customer billing/usage charge with respect to services provided.

Allowable Subject Matter

4. Claims 18-22, 29, 34, 35 are allowed over prior art.

The following is a statement of reasons for the indication of allowable subject matter: Although the cited art, Wulkan et al, Honig et al, Easki et al, Saari et al and Okamoto discloses data transfer routing and management for a packet communication system that includes ATM networks wherein there exist multiple internetworking units (IWU), packets include IP addresses, statistical information is used to charge fees (tariffs) to each cell/subscriber (multiple customer terminals), usage charge of subscriber is recorded and multicasting data, a telecommunication call management system wherein the architecture includes carrier selection database, utilizes Internet, includes an updating mechanism, updating tariff information/databases (revising tariff), a plurality of subscribers, updating a plurality a data servers which holds a geographically based tariff data of service providers, tariff server includes performance data, billing parameters, cost router, calculate cost (tariff), and the data server distributes tariff data computers, tariff data server provided for monitoring/updating changes in telephone service provider tariffs and downloading a database of tariff data to computers, fixed rate/variable rate billing schemes, possible factors used as variables associated with usage charge formula include service type, QoS, ATM parameters, connection time, other traffic flow parameter usage charge formula consist of various

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coefficients and formulas for computing the various variables/coefficients, detecting load levels/load status, communicating packet data, encryption/decryption unit, encrypt charge into a check code the fail to teach/suggest sampling part of the traffic communicated between users and the network, and for sampled traffic comparing any payments made by users, comparing sampled traffic with traffic contracted for by the user, amending the user status when a discrepancy between the sampled parameters and the contracted parameters are detected.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell P. Jones whose telephone number is 571-272-3180. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Prenell P. Jones



December 10, 2004



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12/10/04